

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOE T. SMITH, and)
JAMIE SMITH,)
)
Plaintiffs,)
)
V.) No. 10-CV-269-GKF-PJC
)
SENTINEL INSURANCE COMPANY,)
LTD., a Connecticut corporation;)
and THE HARTFORD FINANCIAL SVCS.)
GROUP, INC., a Delaware)
corporation,)
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS

HAD ON MAY 3, 2011

BEFORE THE HONORABLE PAUL J. CLEARY, Magistrate Judge

APPEARANCES:

For the Plaintiff: Mr. Wade D. Gungoll
Gungoll Jackson Collins
Box & Devoll, P.C.
Chase Tower 3030
100 North Broadway
Oklahoma City, Oklahoma 73102

For the Defendant: Mr. David E. O'Melia
Richards & Connor
Park Centre Building, 12th Floor
525 South Main Street
Tulsa, Oklahoma 74103

1 PROCEEDINGS

2 May 3, 2011

3 THE CLERK: This is Case Number 10-CV-269-GKF-PJC, Joe
4 T. Smith and Jamie Smith vs. Sentinel Insurance Company, et al.
5 Counsel please state your appearances for the record.

6 MR. GUNGOLL: Wade Gungoll for plaintiffs Joe and
7 Jamie Smith.

8 MR. O'MEILIA: David O'Melia on behalf of Sentinel
9 Insurance Company, Ltd.

10 THE COURT: All right. We're here on a motion for
11 protective order having to do with a 30(b) (6) deposition. Is
12 that 30(b) (6) set for tomorrow?

13 MR. O'MEILIA: Yes, Your Honor.

14 THE COURT: Okay. And we're still going forward with
15 that?

16 MR. O'MEILIA: We have an agreement for another date.

17 THE COURT: Okay.

18 MR. GUNGOLL: However, Your Honor, we would like a
19 determination that the Exhibit A would be applicable to that
20 deposition even though it's not --

21 THE COURT: In other words, that you don't have to
22 reserve the deposition notice?

23 MR. GUNGOLL: Yes, Your Honor.

24 MR. O'MEILIA: And that would be part of the agreement
25 as well, Your Honor and --

1 THE COURT: Are you going to bring these 30 -- or at
2 least the first 30(b) (6) person down here?

3 MR. O'MEILIA: Yes. Yes, Your Honor, we're
4 anticipating no matter how many we need they will come here.

5 THE COURT: They will all come down here. All right.
6 Okay. All right. So Mr. O'Meilia, do you want to address your
7 motion?

8 MR. O'MEILIA: Yes, Your Honor. If the Court please.

9 THE COURT: Okay.

10 MR. O'MEILIA: Your Honor, we set forth in our brief a
11 number of objections. The first thing that I would like to
12 just briefly touch on is the general overbreadth of many of the
13 topics here. And this has been sort of an ongoing problem or
14 issue in this case between plaintiff and defendant in the sense
15 that plaintiff, at least in defendant's opinion, has propounded
16 numerous discovery requests, including the ones here, that are
17 significantly overbroad. And then the goal, it seems, is then
18 to try to compromise and work those down. And it's just
19 basically Sentinel's position that that's not what discovery is
20 for, is to start out with general broad, overbroad requests and
21 then try to work them by compromise down into something that --
22 that is agreeable to both parties. And we don't think that's
23 for the Court either. And we cited Regan-Touhy vs. Walgreen
24 Company which essentially has to do with written discovery, but
25 it's also applicable to all discovery, that the Court is not

1 required by any means to spend it's time cutting down overbroad
2 requests.

3 The first objection that we listed was objection to
4 Deposition Topic No. 5 which reads, "Discussions with third-
5 party roofing contractors regarding the condition of
6 plaintiffs' roof."

7 We believe that, as we said, the relevance of the
8 topic is not readily apparent, the scope is overbroad, it fails
9 to identify any conversations or discussions or -- and it
10 doesn't even ask who the -- you know, it doesn't tell us who
11 supposedly the discussions are. And then, of course, in the
12 response by and objection by the plaintiff, they start off with
13 the fact that there is a claim note that says that we produced.
14 "Three different roofers disagree and claim the insureds has
15 hail damage to roof and needs replacement."

16 THE COURT: Uh-huh.

17 MR. O'MEILIA: Well, that doesn't indicate that there
18 are any discussions particularly because they attach as
19 exhibits paperwork from apparently third-party roofing
20 contractors that was provided because -- to Sentinel and their
21 adjuster in looking at this, but that doesn't identify or show
22 that there were any discussions and certainly doesn't identify
23 what discussions they're talking about.

24 THE COURT: Have you checked with your folks to
25 determine whether or not anybody is aware of any such

1 discussions?

2 MR. O'MEILIA: I have not, Your Honor. Now, I'm --

3 THE COURT: Let me stop you there. I mean, wouldn't
4 that be the first step because if your folks say we just don't
5 know of any such discussions, you can advise Mr. Gungoll that,
6 you know, when the time comes at the deposition that, you know,
7 we've looked into it. As far as we know there were no such
8 discussions with third-party roofers and if you can give us
9 more information we'll look into it. But you've got some
10 obligation here to look into it in the first instance.

11 MR. O'MEILIA: Well, my client, of course is dealing
12 with trying to designate or determining the designation of who
13 will be called to testify as the 30(b) (6) witness based on the
14 Court's ruling today. So I'm not going to assume that they
15 have taken any steps to determine if there are any discussions.
16 It's just that Sentinel objects to this, it's -- We believe
17 that they at least have to identify what discussions they are
18 talking about and what evidence they have that there were
19 discussions before they give us a topic, a general topic of
20 discussions with third-party roofing contractors regarding the
21 conditions of plaintiffs' roof. Obviously, their client had
22 some contact with these roofers and had discussions with these
23 roofers or they wouldn't have issued reports. So, you know, it
24 doesn't even say Sentinel's discussions with third-party
25 roofing contractors or Sentinel's adjusters' discussions. And

1 that's the point of the objection. Again, this is just
2 overbroad on its face.

3 THE COURT: Okay.

4 MR. O'MEILIA: That would be the first. Our objection
5 to Topic No. 8.

6 THE COURT: Okay.

7 MR. O'MEILIA: "Details regarding Sentinel's business
8 relationship with GAB Robins, Inc."

9 As we indicated, shortly after The Sentinel adjuster
10 denied plaintiffs' roofing claim, plaintiffs contacted their
11 insurance agency and requested further investigation which
12 Sentinel then hired GAB Robins, who is an independent adjuster,
13 to do that. And they determined that there was, I think, five
14 hundred and some dollars in damage to some screens and window
15 sills and things like that, but nothing to the roof and it was
16 well below the deductible and so the claim was denied or
17 continued to be denied.

18 THE COURT: So Rob -- somebody from Robins did the
19 actual adjustment?

20 MR. O'MEILIA: Did the second adjustment. No, we had
21 Sentinel adjuster who originally denied the claim.

22 THE COURT: Right. And then you had Robins come in
23 and do the second. Okay.

24 MR. O'MEILIA: Then we had Robins do an independent
25 adjustment after the plaintiffs requested further

1 investigation.

2 THE COURT: Okay.

3 MR. O'MEILIA: And we have no objection, and as the
4 plaintiff notes we said in our papers admittedly such topic
5 would be relevant if the business relationship was defined in
6 this case, which it's not defined, as between Sentinel and GAB
7 Robins North America, Inc., specifically with regard to
8 plaintiffs' claim. That was actually suggested to plaintiff,
9 plaintiffs' counsel in the 37.1 conference and rejected because
10 they want to ask about Sentinel's, some kind of general,
11 whatever business relationship that Sentinel has with GAB
12 Robins without any basis for relevance. And so -- and again
13 there's no, there's no claim in this case of any fraud, there's
14 no claim of any pattern and practice, there's no claim of
15 anything like that in the plaintiffs' complaint. This is a
16 singular adjustment and denial of plaintiffs' claim, insurance
17 claim.

18 THE COURT: Uh-huh.

19 MR. O'MEILIA: And so the Court, as you may recall,
20 gave plaintiffs some leeway after a hearing we had with respect
21 to subpoenas to GAB Robins, and also to Sentinel, and limited
22 the scope as to -- I'm sorry, Haag Engineering, and limited the
23 scope as to the Haag Engineering subpoena to be just the
24 residential storm files in the last several years, I forget
25 what it was, four or five years in Oklahoma, which turned out

1 to be 14, 15 including plaintiffs' claim. And then because GAB
2 filed no objection the Court let that subpoena stand and GAB
3 has produced, I don't even know how many files, but there's
4 nothing in those files and certainly plaintiffs aren't going to
5 be able to produce to this Court any evidence from those files
6 showing any pattern and practice of denying claims or Sentinel
7 denying claims and, therefore, I think it's not relevant to go
8 further with this and permit any kind of further fishing
9 expedition.

10 The next objection is details, Topic 14, "Details
11 regarding Sentinel's business relationship with Haag
12 Engineering." Our argument is similar or actually the same as
13 to Haag Engineering as it is to GAB Robins. Significantly
14 later, almost two years later after the initial claim -- well,
15 I take that back, it wasn't almost two years later, it was
16 significantly later, many months later the plaintiff had some
17 leakage in their roof after a storm and they again complained
18 to their insurance agency who again called up The Hartford
19 and -- or called Sentinel, excuse me, called Sentinel and asked
20 them to investigate further. And they then went ahead and said
21 okay, we'll hire an engineering company to come out and look at
22 it, which they hired Haag, and Haag said there wasn't any hail
23 damage to the roof, similar to what GAB Robins found, no hail
24 damage to the roof, and the claim continued to be denied.

25 Now the plaintiff starts off in their objections --

1 well, and I don't even know if that's the initial thing that
2 they said, but -- And we've heard this before about this
3 Watkins vs. State Farm Fire and Casualty Company case down in
4 Grady County where the plaintiffs in that case -- number one,
5 it was a class action and they alleged fraud and they alleged
6 fraud by State Farm. Hartford wasn't a -- Sentinel wasn't a
7 party to that case and no finding was made as to Sentinel
8 Insurance and no finding was made as to Haag Engineering
9 either. It was made as to State Farm who -- based on the
10 alleged fraud. And there's a totally unsubstantiated,
11 unsupported statement in here toward the bottom of page 8 in
12 the last paragraph. It says, "The evidence uncovered in the
13 Watkins case" -- this is in their objection and response --
14 "revealed that Haag's Engineering reports were fictitious and
15 wrongfully utilized as a pretext to deny legitimate claims.
16 There's no support for that anywhere. We -- you can look at
17 the verdict forms that they attached themselves and it found
18 that State Farm recklessly disregarded its duty to deal fairly
19 with the class members in its use of Haag Engineering Company.
20 And second, they found that State Farm intentionally and with
21 malice breached its duty to deal fairly and act in good faith
22 with class members in its use of Haag Engineering Company, but
23 it doesn't make any finding and there's no evidence presented
24 by the plaintiff here that supports that statement on page 8
25 that Haag Engineering's reports were fictitious and that kind

1 of thing. It just -- it just doesn't exist.

2 And then I want to address their citation of Vining
3 vs. Enterprise Financial Group. I think this Court is well
4 familiar with Vining because you've actually issued an opinion
5 that distinguished Vining from the case that you were
6 considering at the time. But Vining does not mandate a
7 complete free-for-all in discovery regarding bad faith claims,
8 as what is essentially requested by the plaintiffs here, and it
9 certainly doesn't permit that discovery that they are asking
10 for. This Court in AG Equipment Company vs. AIG Life Insurance
11 Company, 2008 WL 5205192. In that case the plaintiff, the
12 Vining plaintiff had actually alleged and proved its bad faith
13 by showing the defendant engaged in a pattern and practice of
14 abusive rescissions of life insurance policies. No such
15 allegation exists here of any pattern and practice in their
16 complaint. The Vining claim actually targeted Vining's general
17 business practices. That is not the case here. Now of course,
18 the Smiths seem to want it to be the case, even though they
19 didn't make the claim in the case and it's not -- now they have
20 later decided they can just claim it as part of discovery and
21 continue about this fishing expedition.

22 In Vining, Your Honor distinguished Vining from this
23 type of case because the plaintiff had alleged they wanted --
24 that the Financial Group engaged in pervasive, consistent
25 pattern of abusive rescissions. And as this Court found,

1 Vining's claim targeted Enterprise's general business
2 practices, quote, "general business practices," unquote. And
3 you held in AG equipment that is not the case here in AG
4 equipment. And it's not the case in this, in the instant case
5 before Your Honor.

6 The Court found the first amended complaint makes no
7 allegations whatsoever of a general business practice by AIG to
8 deny insurance claims and no such evidence has been proffered
9 in support of the requested discovery.

10 So they are requesting, the Smiths are requesting
11 discovery here with no evidence to support it other than their
12 continued reliance on this Watkins vs. Haag Engineering case
13 which had nothing to do with GAB and has nothing to do with
14 Sentinel Insurance Company, Ltd., my client.

15 And just as an aside, the Watkins case, that class
16 action case was an overhead and profits case as well and was
17 not some kind of denial of a -- one particular claim. It was
18 an overhead and profits case against State Farm.

19 Deposition Topic No. 15 that we asked the Court to
20 issue a protective order reads, "Sentinel's relationship to" --
21 and this is very important -- "to The Hartford Financial
22 Services Group, Inc.," which is a defendant in this case. And
23 for short I'll just call them HFSG, Hartford Financial Services
24 Group, Inc. As the topic indicates, the plaintiff continues to
25 want, as they have throughout their papers in this case,

1 continues to call HFSG quote, "The Hartford." HFSG is not The
2 Hartford and we have produced evidence of that over and over
3 and over again.

4 And I don't know if the Court had the opportunity,
5 although we -- although we incorporated HFSG's motion and the
6 exhibits to it into this -- into our motion for protective
7 order. And specifically the primary exhibits that I would
8 point out to the Court that are attached to HFSG's motion for
9 summary judgment is a declaration of Ricardo Anzaldua in
10 support of defendant Hartford Financial Services Group's motion
11 to dismiss which it was also attached to that which the Court
12 found because there were factual issues involved it was better
13 raised on summary judgment which HFSG has now done. And
14 essentially -- and has the Court had an opportunity to see that
15 affidavit? If not, I would like to introduce it as --

16 THE COURT: If it's not attached to your motion for
17 protective order --

18 MR. O'MEILIA: No, it's not. I --

19 THE COURT: -- and it's not attached to theirs,
20 there's no reason why I would be looking at it.

21 MR. O'MEILIA: Well, as I indicated, we incorporated
22 it by reference herein, but I do have it and would like to
23 submit it.

24 THE COURT: Any objection?

25 MR. GUNGOLL: No objection, Your Honor.

1 THE COURT: Okay. Let me take a look at it.

2 MR. O'MEILIA: And I'll just briefly give the Court
3 the highlights.

4 THE COURT: Uh-huh.

5 MR. O'MEILIA: This Mr. Anzaldua was the corporate
6 secretary of HFSG and under oath his affidavit says HFSG is not
7 an insurance company, it's not authorized to sell insurance in
8 the state of Oklahoma, it did not issue the policy of insurance
9 to plaintiffs, it did not adjust plaintiffs' insurance claim,
10 and it's the parent company of Sentinel Insurance Company, Ltd.

11 It says Sentinel Insurance Company issued the policy
12 to the plaintiffs. Sentinel Insurance Company is solvent in
13 good standing with the Oklahoma Insurance Department, and
14 Sentinel Insurance Company, Ltd. conducted the adjustment of
15 plaintiffs' insurance claim.

16 THE COURT: So there is a relationship between
17 Sentinel and Hartford Financial Services Group.

18 MR. O'MEILIA: Absolutely. And --

19 THE COURT: And so Topic 15 is to have somebody
20 testify and explain that relationship.

21 MR. O'MEILIA: Which what I'm telling the Court is
22 they are already aware of anything that could possibly be
23 relevant to this case as to the relationship from, number one,
24 this particular affidavit that's filed in the case. And they
25 can -- if they are permitted to take the 30(b) (6) deposition of

1 HFSG, if the Court hasn't ruled on our motion for summary
2 judgment, which we fully expect a favorable ruling, but that's,
3 you know, that's in the future. Our Exhibit D to that --

4 MR. GUNGOLL: Can we just confine this to the topic of
5 the protective order?

6 THE COURT: Yeah, I mean, we're getting a little off
7 topic here, Mr. O'Meilia. What I have before me is a motion
8 for protective order with regard to a 30(b)(6) deposition of
9 Sentinel.

10 MR. O'MEILIA: Yes.

11 THE COURT: Now, if they, you know -- they've have
12 asked for someone to testify about Sentinel's relationship to
13 HFSG.

14 MR. O'MEILIA: That's correct.

15 THE COURT: You've admitted, conceded that there is a
16 relationship.

17 MR. O'MEILIA: They're the parent, they're the parent
18 holding company but, Your Honor, the point is --

19 THE COURT: Maybe that's all they have to say, I don't
20 know. Why would we have a protective order preventing them
21 from even inquiring into that?

22 MR. O'MEILIA: Well, their inquiry is apparently much
23 further as is indicated here in their papers. They are trying
24 to assert in their objection an alter ego veil-piercing type
25 theory. And as this Court well knows, and I have all the

1 federal caselaw on it, in order to assert any type of
2 veil-piercing theory, any type of alter ego theory, number one,
3 it has to be pled in the complaint, which it's not, and it has
4 to be pled with significant specificity. And of course there's
5 nothing in the complaint about veil piercing and alter ego, but
6 that's what they argue in their papers that they're after. And
7 so we want a protective order as to that kind of inquiry. If
8 all they want to know is what is HFSG and what is Sentinel,
9 Sentinel will be more than happy to tell them that they are an
10 insurance subsidiary of HFSG. And what we've shown by our
11 exhibits to our motion for summary judgment in HFSG by -- also
12 by the Securities and Exchange Commission Form 10-K, HFSG has
13 no significant business operations of its own. And so all this
14 inquiry and attempt at proving something that's not even a
15 claim in the case should be limited by this Court. And in that
16 regard I want to discuss their citation and discussion of
17 Oliver vs. Farmers Insurance Group of Companies and Farmers
18 Group, Inc. which is 941 P.2d, 985, Supreme Court of the State
19 of Oklahoma. Here's where the entire problem lies in this case
20 and what they are attempting to do and how they are attempting
21 in their papers to -- I mean, they mis -- they misrepresent
22 what the Oliver case says. The Oliver case was -- said you
23 could sue an unincorporated entity, and that was Farmers
24 Insurance Group of Companies, you could sue them because they
25 showed in Oliver that the other defendant, Farmers Group, Inc.,

1 was essentially a management company for all the companies
2 under what was known as a registered service mark, Farmers
3 Insurance Group of Companies.

4 Now what they have tried to do, inappropriately so, is
5 analogize that to this case. The first and most significant
6 fact is they haven't sued The Hartford. Now, they could have
7 sued The Hartford based on Oliver vs. Farmers Insurance Group
8 of Companies, and that's because The Hartford is HFSG, Hartford
9 Financial Services Group and together with its subsidiary
10 companies, including it's financial services division companies
11 and it's insurance division companies. The problem is they
12 can't sue that unincorporated entity, The Hartford, because
13 Hartford Financial Services Group is not a management company
14 like the Farmers Group, Inc. was in Oliver. See that was the
15 whole thing in Oliver. The Farmers Group, Inc., which they are
16 trying to analogize to HFSG, was the management company for all
17 its subsidiaries. Here HFSG is just a parent holding company.
18 It doesn't have -- its only assets are stock and it does not --
19 it's not a management company over any of its subsidiaries.

20 THE COURT: Let's assume that their reliance on Oliver
21 is completely erroneous.

22 MR. O'MEILIA: All right.

23 THE COURT: That still brings us back to why somebody
24 on behalf of Sentinel can't describe their relationship, as
25 you've done here with Hartford Financial Services Group at a

1 30(b) (6) deposition. Whether or not they can -- you know,
2 whether or not they can ever proceed to trial on a theory
3 against HFSG is another issue.

4 MR. O'MEILIA: Yes, sir.

5 THE COURT: But all we're talking about here is a
6 30(b) (6) topic which says have somebody ready to testify about
7 Sentinel's relationship to The Hartford Financial Services
8 Group. We've conceded there is a relationship. Tell them what
9 the relationship is.

10 MR. O'MEILIA: And we will be more than happy to do
11 that if the Court will limit the scope of the questioning to
12 not permit the kind of inquiry that you would go into in some
13 kind of alter ego veil-piercing theory because it is not
14 appropriate because it hasn't been alleged as required by the
15 Federal Rules, and that is the point of our objection.

16 THE COURT: Well, the problem is it's very difficult
17 for the Court to say I'm going to set a limit on what you can
18 ask in this general area when it hasn't even come up yet. Now
19 admittedly, they're putting things in their papers that would
20 indicate that's where they want to go. If that starts to
21 happen, then I think certainly then it's appropriate to seek
22 some relief from the Court. But on the 30(b) (6) notice itself
23 and what's before the Court -- and I'll talk to Mr. Gungoll
24 here in a moment -- I don't think there's anything certainly
25 improper about having somebody describe the relationship

1 between Sentinel and Hartford Financial Services Group. How
2 far it goes? Well, we'll see.

3 MR. O'MEILIA: I understand the Court's position on
4 that. Deposition Topic No. 17. And of course it's Sentinel's
5 role in issuing the plaintiffs' insurance policy including the
6 decision to write plaintiffs' homeowners insurance policy. The
7 primary point here is it is not an issue in the case, coverage
8 is not an issue in this case. If the plaintiffs roof was
9 damaged by the April the 8th, 2008 hail storm, it's covered.
10 The entire issue is -- has to do with whether there was hail
11 damage or not. So anything about Sentinel's role in issuing
12 the plaintiffs' insurance policy including the decision -- I
13 mean, it's way overbroad, there's nothing you can tell from --
14 well, actually you can, you can tell from the content of that
15 topic 17 that it's not relevant.

16 THE COURT: Mr. O'Meilia, let me ask you this. You've
17 got these 23 topics here and you're objecting to a number of
18 them, but largely more on the issue of scope --

19 MR. O'MEILIA: Yes.

20 THE COURT: -- than the issue itself. Do you know at
21 this point whether -- how many witnesses do you think are going
22 to have to respond to answer these topics?

23 MR. O'MEILIA: Well, Your Honor, I'll just give the
24 Court the flavor of what we're doing. The Sentinel has made
25 the decision that their 30(b) (6) witness, which they normally

1 just have the adjusters do the 30(b) (6), will not be the
2 adjusters, it's going to be somebody at a supervisory level.

3 THE COURT: Okay.

4 MR. O'MEILIA: The question that has arisen as to the
5 designation is whether the direct supervisor or supervisors of
6 the two adjusters that were involved in the case be the
7 30(b) (6) witness or witnesses.

8 THE COURT: Okay.

9 MR. O'MEILIA: Or whether somebody at a higher
10 supervisory level needs to be the 300b) (6) witness, and it
11 depends on the Court's ruling on the scope of some of these
12 things because instead of just the direct supervisor of an
13 adjuster, it could go as high as a mid-level supervisor in
14 those, the answer to some of these things. So that's -- that's
15 the best I can --

16 THE COURT: But you could find -- I mean, in other
17 words, you can cover, somebody is going to be able to cover
18 these topics. There may be objections to how far in scope we
19 go, but obviously someone can testify as to Sentinel's
20 relationship with The Hartford Financial Services Group.

21 MR. O'MEILIA: Yes.

22 THE COURT: If we go off into what you say is
23 predicates for an alter ego theory then that becomes -- may
24 become a different matter, but somebody can at least cover the
25 base on those issues pretty fairly.

1 MR. O'MEILIA: That's correct, Your Honor.

2 THE COURT: All right.

3 MR. O'MEILIA: That's correct.

4 THE COURT: Okay.

5 MR. O'MEILIA: That concludes my argument as to Topic
6 17, it's just not -- coverage isn't an issue in the case.

7 THE COURT: Okay.

8 MR. O'MEILIA: Deposition Topic 18, "Sentinel's
9 compensation arrangement with the plaintiffs' insurance agent,
10 Andy Soares." How that could possibly be relevant or what the
11 relevance is, that's something that the plaintiff is going to
12 have prove, we believe, to the Court because it's not apparent
13 what the relevance is to the plaintiffs' insurance claim. The
14 insurance agent, Andy Soares was not involved in any way in the
15 adjustment of this case and --

16 THE COURT: Soares didn't have anything to do with the
17 decision as to whether or not the roof would be covered?

18 MR. O'MEILIA: That's correct. That's correct. Now
19 if the -- you know, if the Court would -- well, I'll just stand
20 on that.

21 THE COURT: Okay.

22 MR. O'MEILIA: And again, I pointed out in here that
23 it's the plaintiffs' insurance agent, Andy Soares. I mean they
24 can take his deposition, they can find out whatever they want
25 from Mr. Soares, I guess, if they think there's some relevance

1 to that as opposed to trying to get into it through 30 (b) (6)
2 without relevance, which they are required to show when it's
3 not ascertainable from the topic itself.

4 THE COURT: Uh-huh.

5 MR. O'MEILIA: Deposition Topic No. 19, "Whether the
6 employees of Sentinel also generally serve as employees for The
7 Hartford's other subsidiary entities." Well, number one, The
8 Hartford is not a defendant in this case. Also, the relevance
9 of that is not apparent from the content of the topic because
10 there's no issue as to coverage. Sentinel adjusted the case.
11 What employees they're are talking about, whether we're talking
12 about clerical employees, whether we're talking about -- I
13 don't know what we're talking about, that's the problem with
14 the entire overbroad nature of this particular topic.

15 THE COURT: Okay.

16 MR. O'MEILIA: Deposition topic 20, "The weather
17 conditions in the Tulsa metropolitan area, including the cities
18 of Tulsa, Broken Arrow, Sapulpa, Owasso, Sand Springs, Bixby
19 and Claremore with respect to the storm event of April 7th and
20 April 8th of 2008."

21 Well, as I pointed out in our motion, the weather
22 conditions in any other area, other -- even within the City of
23 Tulsa except the immediate area of the plaintiffs' residence
24 certainly isn't relevant. I mean the question is did hail
25 damage the plaintiffs' roof and have we been in bad faith in

1 denying the plaintiffs' claim for that damage. I mean even the
2 weather conditions to homes immediately adjacent, you know, to
3 plaintiffs' residence aren't relevant. Now, plaintiff has
4 tried to say that, well, some of the other people, in fact most
5 of the other people in that neighborhood got their roofs
6 replaced. Well, they weren't insured by Sentinel. They -- you
7 know, I don't know what -- what kind of adjustment they have,
8 we don't know what kind of -- you know, even if they all had
9 cedar shakes. You know, cedar shakes are different in
10 composition, they're different in thickness, they're different
11 in the way they're cured. You know, we could get on into this
12 ad infinitum. But the weather conditions, now how is Sentinel
13 supposed to know the weather conditions in all of those areas
14 and try to find out when all we did was adjust the claim as to
15 plaintiffs' house.

16 Deposition Topic No. 21, "All claims for homeowners
17 insurance benefits associated with hail damage that were
18 submitted to Sentinel in the Tulsa metropolitan area," and
19 again, including all those list of cities. Whether or not
20 somebody else's home is damaged by that -- was damaged by this
21 hail storm and whether we paid it or not has nothing to do with
22 the issue in this case of whether plaintiffs' roof had hail
23 damage. I think that's -- that's essentially it.

24 And at this point I would just like to mention their
25 continued statement regarding the exception to the

1 Gramm-Leach-Bliley Act. Obviously there's an exception to the
2 Gramm-Leach-Bliley Act, but it doesn't apply to -- you know,
3 unless the Court finds that the topics are relevant. And
4 trying to get into other insureds' files is a violation of
5 those other insureds' privacy which Hartford is required to
6 protect under the Graham-Leach-Bliley Act. And just because
7 the plaintiff wants to look at them -- and the Court has
8 already, the Court has already granted a subpoena to Haag
9 Engineering and to GAB for their files, but to just let them go
10 on the -- the exception only applies, number one, if it's
11 relevant; and number two, if the Court were to balance that
12 relevance against the fact that it's providing information as
13 to other insureds because it's just not -- the relevance is so
14 minimal, if any, here to violate those persons' right to
15 privacy.

16 Deposition Topic No. 22, "The condition of the area in
17 the immediate vicinity of plaintiffs' residence in the wake of
18 the April 7th and 8th 2008 hail storm."

19 Well, I mean it's undisputed that the first adjuster
20 that got out there for Sentinel didn't get there until April
21 29th, 2008. So the condition of the area in the immediate
22 vicinity of plaintiffs' residence in some unidentified wake,
23 undefined wake of the hail storm is overbroad, it can't
24 possibly be calculated to lead to the discovery of admissible
25 evidence. Maybe the condition when he got out there and looked

1 at and did his investigation may be relevant. But, you know,
2 the kind of topics that they throw out here are overbroad on
3 their face and that was where I started my argument.

4 And the final one is Deposition Topic No. 23 which is
5 the most overbroad of all of them, "Investigation" -- it
6 doesn't say whose investigation, it just says "Investigation of
7 claims for hail damage involving properties that are adorned
8 with wooden shake roofs."

9 I don't even thinking I need to argue that one, Your
10 Honor.

11 THE COURT: Okay. All right, Mr. Gungoll.

12 MR. GUNGOLL: Yes, Your Honor. May it please the
13 Court. Your Honor, if I may start out by talking a little bit
14 about the fairly amazing lack of cooperation that we're
15 experiencing in discovery to this point. We just filed a
16 motion for extension of dates. We are -- we've also had to
17 file a motion to compel because beyond the documents that
18 Sentinel produced in their initial disclosures, Sentinel has
19 produced a total of 35 documents. Of those 35 documents 32 of
20 them are photographs. Okay. Hartford doesn't seem to think
21 that it's subject to -- HFSG, The Hartford Financial Services
22 Group, does not seem to think that it's even subject to the
23 Federal Rules of Civil Procedure in this case. And if I may --

24 MR. O'MEILIA: Excuse me, Your Honor, are we dealing
25 with Sentinel here or the motion for protective order?

1 MR. GUNGOLL: Well, I'd just like to --

2 THE COURT: All right. Mr. O'Melia, I gave you some
3 leeway --

4 MR. O'MELIA: I understand.

5 THE COURT: -- in terms of discussing, so I'll let Mr.
6 Gungoll do it, but I do want to get back on point.

7 MR. GUNGOLL: Okay. Yes, Your Honor, this is just --
8 this will just be real brief. I just would like to demonstrate
9 to the Court. This was the Interrogatory No. 2 to HFSG:

10 "State the name, title or position, address and
11 telephone number of the person answering these interrogatories."

12 "Answer: Subject to and without waiving HFSG's
13 objections to each interrogatory, undersigned counsel for HFSG
14 directs plaintiffs to business records of HFSG from which the
15 answers given subject to those objections may be ascertained.
16 Specifically The Hartford Financial Services Group, Inc.'s
17 publicly filed 2011 SEC form 10-K and all of its other publicly
18 filed reports and documents found at the SEC's EDGAR database
19 www.sec.gov," et cetera.

20 THE COURT: Okay. Yeah, I think that's an
21 inappropriate response, but it's not before me today and it's
22 not helping me at all --

23 MR. GUNGOLL: Okay.

24 THE COURT: -- with what is before me today.

25 MR. GUNGOLL: Okay. Okay.

1 THE COURT: So I would really like to get back on
2 point.

3 MR. GUNGOLL: Okay. All right. If we may get back on
4 point.

5 THE COURT: And I think what, you know, what we need
6 to focus in here on is as I understand this case the Smiths
7 have a claim that they suffered hail damage to their roof that
8 was covered, in their estimation covered by their policy with
9 Sentinel and should have been paid. And as I read through
10 this, I do have a clawing feeling that we're losing sight of
11 that, that we're way -- that we're outside the box. And I
12 think, you know, you're entitled to some leeway to better
13 understand the relationships between the various entities here.

14 MR. GUNGOLL: Okay.

15 THE COURT: But you know, there's going to be, there's
16 going to be -- if we need to we'll put a very strict confined
17 definition on where we're going with these depositions.

18 MR. GUNGOLL: Okay. Well, if I may. We had
19 originally moved to amend. We're bound in this case by our
20 state court petition.

21 THE COURT: Okay.

22 MR. GUNGOLL: Because the action was removed to
23 federal court. We previously moved to insert a fraud claim on
24 the basis of HFSG's various representations that it's not an
25 insurance company, when we believe the evidence clearly

1 demonstrates that it is.

2 THE COURT: Okay.

3 MR. GUNGOLL: Now the allegation is that the
4 plaintiffs had an insurance policy with both Sentinel and The
5 Hartford Financial Services Group, Inc., and we contend that
6 both entities in bad faith breached that contract.

7 THE COURT: Okay.

8 MR. GUNGOLL: So that's the basis of the claim.

9 THE COURT: And where does the fraud claim stand?

10 MR. GUNGOLL: The Court did not permit us leave to
11 amend. Now --

12 THE COURT: All right, so it's not in the case?

13 MR. GUNGOLL: It's not in the case.

14 THE COURT: All right. So again, let's focus on what
15 we do have in the case. And I understand you've got -- so
16 you've essentially have got a breach of contract claim --

17 MR. GUNGOLL: Yes.

18 THE COURT: -- and a bad faith claim --

19 MR. GUNGOLL: Yes.

20 THE COURT: -- against these two entities?

21 MR. GUNGOLL: Against the two entities. We contend
22 that they both --

23 THE COURT: And Judge Frizzell denied the motion to
24 dismiss on Hartford Financial Services Group based on the
25 allegations that were in the petition without getting into

1 whether there was sufficient evidence to support them, that's
2 what we'll address --

3 MR. GUNGOLL: Yes.

4 THE COURT: -- what we'll address on summary judgment.

5 MR. GUNGOLL: Yes. And Your Honor, HFSG has moved for
6 summary judgment --

7 THE COURT: Okay.

8 MR. GUNGOLL: -- on the basis that it's not an
9 insurance company, that they had nothing to do with this and we
10 contend that that's not the case.

11 THE COURT: Is there any -- is there any -- I mean, do
12 you have a legitimate concern that Sentinel, that if you
13 prevailed on your claim that Sentinel couldn't pay?

14 MR. GUNGOLL: Your Honor, I'm not entirely certain
15 because they've not produced any documents. We can't get them
16 to comply with discovery so I don't even know the answer to
17 that question. They keep asserting about their solvency --

18 THE COURT: Okay. But do you have any reason to think
19 that there's a solvency question or any kind of inability on
20 Sentinel's part to pay a judgment if one -- well, what are we
21 talking about in terms of the amount of the roof damage?

22 MR. GUNGOLL: The amount of damages, it's right around
23 \$40,000.

24 THE COURT: 40,000 for the roof?

25 MR. GUNGOLL: Yes.

1 THE COURT: Okay.

2 MR. GUNGOLL: Well, and that also includes their
3 remediate -- the additional things that we've had to pay.

4 THE COURT: Okay.

5 MR. GUNGOLL: So it's roughly 40, \$40,000 plus
6 accruing attorney's fees and other considerate --

7 THE COURT: Okay. And is there any reason for you to
8 think at this point, whether or not you know whether Sentinel
9 could write that check, is there any reason to think that they
10 couldn't?

11 MR. GUNGOLL: No.

12 THE COURT: I just was curious why we're going down
13 this particular road?

14 MR. GUNGOLL: Well, I mean it's comparable to the
15 Oliver case because we contend that we were under the
16 impression that we had an insurance contract with The Hartford
17 Financial Services Group, Inc. We think that the evidence
18 shows that. It's our position that whether or not sufficient
19 evidence exists to proceed under an alter ego theory is a --
20 it's a threshold evidentiary question and we've got to have the
21 evidence to see whether or not that's borne out. I mean at
22 this point, we weren't familiar with the facts of this case
23 when we filed our state court petition. We've subsequently,
24 you know, having to do basically our own discovery have
25 acquired some stuff and we're trying to get some more, but

1 they're -- you know, this case is still very much in its
2 formative stage and that's why we've asked for the extension
3 because we can't get any discovery. We don't know exactly
4 what's there with respect to an alter ego type of theory. I
5 mean, I think the evidence is pointing in that direction if you
6 look at the documents that we attached to this --

7 THE COURT: It's just that, Mr. Gungoll, as I look at
8 this, and I've seen a number of these things, I mean I think, I
9 think both of you are getting way off the beaten track. I
10 think some of the discovery responses that I've heard and I've
11 seen in the past are -- border on ridiculous. And I think some
12 of what we're getting into here, I think, is losing track of
13 the sight that you've got people that want to know whether the
14 insurance company appropriately denied their claim for hail
15 damage and all of a sudden we're, you know, marching forward,
16 spending a lot of money and spending a lot of time on theories
17 that ultimately may really not have a lot to do with this case.
18 I don't know. I mean, I don't know. You're entitled to
19 obviously do discovery and find out, but just because you file
20 a lawsuit doesn't mean that you get to discover every piece of
21 paper and decide what other sorts of multiple claims you might
22 bring. I mean we've got to keep this thing focused on what's
23 before the Court right now.

24 MR. GUNGOLL: Okay. I appreciate that, Your Honor.

25 THE COURT: All right.

1 MR. GUNGOLL: If I may, I guess the best way to do it,
2 just kind of go through each item sequentially.

3 THE COURT: Well, I don't know that we're getting
4 anywhere, frankly going that way because I think the topics
5 with some exceptions -- and I think when you can get into
6 trying to get a 30(b) (6) on the weather conditions in Tulsa. I
7 mean you're essentially asking The Sentinel to put up a
8 corporate rep who's going to espouse the company's policy or
9 the company's position on the weather conditions in Tulsa.

10 MR. GUNGOLL: Well, Your Honor, the basis for that was
11 the documents that we received in the initial disclosures from
12 Sentinel, part of it was the Haag Engineering Report and a lot
13 of that is devoted to weather issues, so I think that's
14 relevant to the case. I mean what --

15 THE COURT: I mean is there any -- is there a dispute
16 here that there was a hail storm?

17 MR. GUNGOLL: No, there's no dispute. The dispute
18 would be as to the magnitude, I believe.

19 THE COURT: I just -- you know, I just don't know that
20 whether somebody sitting in Hartford is going to have a
21 company, be able to espouse a company position on the weather.

22 MR. GUNGOLL: Well, and I mean to be honest with you,
23 Your Honor, they may well not. And if that's the case then
24 that would be sufficient. I mean, I think a lot of this stuff
25 could have been worked out, as I've said in there, by a

1 teleconference.

2 THE COURT: Well, it should have been worked out.

3 MR. GUNGOLL: Yeah.

4 THE COURT: A lot of it should have been worked out.

5 MR. GUNGOLL: And so, you know, I mean if that's the
6 case that they don't know, then so be it. I mean we can live
7 with that kind of response.

8 THE COURT: Here's where, you know, I think you ought
9 to go. I think that the topics, I think when you get into the
10 weather conditions, all claims, you're over the line. I think
11 in general the topics you've got set out here for the 30(b)(6)
12 are appropriate depending on how they are handled. And so what
13 I would suggest to you folks is that you try to refine this
14 list of topics if you can. You do that deposition, the
15 30(b)(6). If it turns out that more people are going to be
16 involved in this and you're going to have start bringing
17 people, more people down, or you're going to be going up to
18 Hartford, whatever the case would be, and there's problems
19 developing over the scope, the Court will step in at that
20 point, once I get a sense of what's going on at these
21 depositions, and if need be we'll just put hour limits on here.
22 If you want to spend, if you want to spend your time asking
23 somebody about the weather conditions in Tulsa in 2008, that's
24 fine, but you won't be getting a whole lot of time then to go
25 to what the heart of the matter is. I mean that may be one way

1 to simply get you folks focused here. You put up your 30(b)(6)
2 witness and you get a total of X number of hours and if you
3 want to spend it on the weather, have at it, and see whether
4 that goes anywhere, have at it. But when it comes down to
5 finding out what you want to know about the Smiths' claim, you
6 may not, you may not get a whole lot more information if you're
7 going to waste your time and everybody's time here.

8 MR. GUNGOLL: Okay. Your Honor, with respect to Item
9 No. 21, we would like to elicit testimony regarding all claims
10 for homeowners insurance associated with hail damage in the
11 Tulsa area as a result of this storm. I mean is that --

12 THE COURT: What are you wanting them to tell you? I
13 mean --

14 MR. GUNGOLL: Well, we would just like to know whether
15 there were additional claims; if so, what were they? We asked
16 that information in our discovery requests but there were no --
17 very evasive responses.

18 THE COURT: Where is the Smiths' home located?

19 MR. GUNGOLL: It's -- I'm trying to think of what the
20 street is.

21 THE COURT: Is it within the Tulsa city limits?

22 MR. GUNGOLL: Yes.

23 MR. O'MEILIA: Yes, it's like hundred and, it's around
24 114th and --

25 MR. GUNGOLL: 104th Place or something, 114th Place.

1 THE COURT: All right. So if there was a claim for
2 hail damage up in Claremore is that really going to be of a
3 great deal of relevance to you in trying to prove that, in
4 fact, Sentinel's decision not to pay benefits on the Smiths'
5 claim is bad faith or a breach of contract?

6 MR. GUNGOLL: Well, I mean I guess that would go
7 somewhat to the track of magnitude of the storm. I mean, where
8 there were damages incurred, how big it was. So I think, I
9 mean, I see the relevance there.

10 THE COURT: I mean what you're essentially looking for
11 is something like how many, how many claims did they process as
12 a result of that April 2008 hail storm?

13 MR. GUNGOLL: Yes, Your Honor.

14 THE COURT: How many were there and --

15 MR. GUNGOLL: How many were there and what happened to
16 them. I mean, you know, we know that there's --

17 THE COURT: Well, again, I think you're pushing the
18 edge of relevance in this sense, I think. That you know,
19 whether -- if somebody up in Claremore had hail damage and got
20 their claim paid still doesn't, in my estimation, advance the
21 ball very much in terms of whether the Smiths also suffered
22 hail damage that should have been covered because as we all
23 know it can be widely different conditions.

24 MR. GUNGOLL: If I could speak to another kind of
25 issue relative to us wanting to talk about HFSG things, it

1 would be that -- and again, that's why some of these topics
2 address whether the employees also work for other subsidiaries
3 is because I think it's important and relevant for us to get
4 the information as to what other HFSG, The Hartford insureds
5 had policies in that immediate area. We know for sure there
6 was a house about four or five houses away that was insured by
7 The Hartford. It wasn't Sentinel specifically, but they
8 presumably had the same claims adjusters, claims handlers, and
9 that roof was replaced. So I mean, I think that's clearly
10 relevant.

11 THE COURT: So you've got a different insurance
12 company, although under the same umbrella, but a different
13 company.

14 MR. GUNGOLL: And so --

15 THE COURT: And you think the adjusters were the same?

16 MR. GUNGOLL: I think it's entirely possible. I mean
17 it --

18 THE COURT: Well, there's a difference between it's
19 entirely possible and they were the same. I mean I think --

20 MR. GUNGOLL: I have reason to believe that they are,
21 they would be the same, yes.

22 THE COURT: And what is your reason to believe that?

23 MR. GUNGOLL: Well, I mean they all seem to work under
24 the same umbrella of The Hartford.

25 THE COURT: Who is they? Who are we talking about?

1 MR. GUNGOLL: Well, the individual who they presented
2 at their -- at our settlement conference, you know, worked --
3 bore a business card that said that he worked for The Hartford,
4 but I guess apparently not HFSG specifically. I think that
5 they all work among -- I'm not even sure exactly what the
6 controlling entity is, who they are working for, but I think
7 that that's relevant to this case to the extent that other folks
8 working for other subsidiaries are one and the same, I think we
9 should be entitled to get into those areas and those questions.

10 THE COURT: Well, again, I think, you know, obviously
11 at this stage of the game under Rule 26 we've got a very broad
12 definition of relevancy. I mean, I can't, I can't say that
13 what you're suggesting would not under any stretch of the
14 imagination be impossible to advance the cause here. I think
15 it's -- I think the farther you get away from the Smiths' claim
16 and the circumstances surrounding it, the relevancy starts to
17 wane. And again it's a matter of where you want to put your
18 time and your client's money. I think, you know, if you want
19 to explore that area a little bit, that's fine, but if it gets
20 to the point where we're dwelling on those sorts of things and
21 this takes on the look of a true fishing expedition where
22 there's nothing out there, then I think the Court will be more
23 interested in interceding at that point. At this stage of the
24 game I think the topics are, some of them are problematic, but
25 in general I think they are okay. When we start seeing what

1 goes on at the depositions then I think there will be more,
2 more to talk about.

3 MR. GUNGOLL: Okay.

4 THE COURT: Do you folks -- in other words, what I'm
5 saying here, Mr. O'Melia, is I'm not going to grant a
6 protective order on the basis of these topics as they are
7 outlined here. I think when you get into a deposition -- and
8 I'm encouraging both of you to use better judgment than what
9 I've seen so far -- that when the two of you get into the
10 deposition give them a little leeway on where they are going,
11 but at some point, you know, if this drags on for hours and we
12 do a six hour deposition on one 30(b)(6) and then we're
13 supposedly going to bring two or three more down here talk
14 about the weather and everything else, I think a protective
15 order at that point would be on more fertile ground, because
16 once I start to see what the questions look like and see if
17 they are going anywhere that seems targeted on the specific
18 issues in this case. If it looks like we are wandering afield
19 then we won't be doing this, we won't be bringing multiple
20 people down here to talk about whether somebody in Claremore
21 filed a claim and got their roof replaced by a different
22 insurance company that might be related to Hartford Financial
23 Group.

24 MR. GUNGOLL: Well, again, I mean that would -- that
25 consideration would bear upon why we've also filed suit against

1 HFSG because we believe that they were our insurer, and so I
2 think that there's a commonalty there and that we should be
3 entitled to that kind of --

4 THE COURT: Well, you've sued them and they are in the
5 case. They haven't been thrown out on summary judgment, so I
6 think you're entitled to explore some issues with them. My
7 only point is that at some point if it looks like that's not
8 fertile ground and if it looks like you've made a mistake, you
9 would be better to recognize that and, you know, sort of
10 revisit where the lawsuit is. If it turns out that HFSG is not
11 an insurance company or doesn't have that -- you don't really
12 need to go down that road to try and figure out whether or not
13 this claim was properly denied, you know, then I think that's
14 the time to reassess and see where this lawsuit is going.

15 MR. GUNGOLL: Okay.

16 THE COURT: Mr. O'Melia, do you understand where
17 we're going here?

18 MR. O'MELIA: Well, yes, Your Honor, I understand
19 what the Court is saying, but in indicating that the Court is
20 going to deny the protective order, the Court said that some of
21 these topics are -- are outside of what they should be.

22 THE COURT: I think they are bordering on -- you know,
23 the weather conditions one is a good example. And some of
24 these, like you say, are rather broadly worded. "Investigation
25 of claims for hail damage involving wood shake roofs." Well, I

1 think it's hard in a 30(b) (6) deposition notice to know whether
2 that topic is totally off base or not. It's really a matter of
3 how it's handled at the deposition. If there's some
4 questioning about that, there could be some questioning on that
5 topic that could be relevant to the case, I think, or I can't
6 say at this point that it wouldn't be, that it wouldn't
7 conceivably be relevant. If it turns out, though, that we
8 spend two hours, you guys spend two hours talking about all
9 sorts of claims on wood shake shingles that are outside the
10 area and may not even be tied into this particular event, then
11 I think a phone call to the Court would be appropriate at that
12 point and I'll step in and we'll put an end to it. You know,
13 you've got to get this thing focussed on both sides and figure
14 out what exactly do you think, is there really something that
15 the people in Hartford are going to know about these weather
16 conditions that would help you, and if so, let's get that out,
17 let's ask them some questions and be done with it. Is there
18 really something about the investigation of claims for hail
19 damage on wood shake shingles or are we just trying to put
20 together a broad list here so that when we get to the
21 deposition we've got things covered, they are on notice what
22 we're looking for and we can go on down the road? Some of
23 these things may drop out. I suspect a lot of these would
24 dropout in the deposition because I don't think it's going to
25 be particularly fertile ground, but I don't know.

1 MR. GUNGOLL: But I mean with respect to the last one,
2 for example, we're just wanting to talk about their general
3 claims handling practices with respect to investigating damage
4 on wood shake roofs. I mean --

5 THE COURT: Is there any difference, do you think
6 there's any difference on their practices with wood shingles as
7 opposed to any other shingles?

8 MR. GUNGOLL: Versus composite, for example?

9 THE COURT: Yeah or --

10 MR. GUNGOLL: I would think so.

11 THE COURT: You think there's --

12 MR. GUNGOLL: I mean, I think there's different damage
13 considerations, you know, as far as --

14 THE COURT: Well, I guess that's, you know, you can
15 explore that.

16 MR. GUNGOLL: But I wouldn't anticipate that taking,
17 you know, hours upon -- and the same with the weather. I mean
18 it's --

19 THE COURT: I mean I think if you bring somebody, you
20 get a 30(b)(6) witness who can arguably address these topics
21 and if it sounds like they are getting too far afield or that
22 your witness can't answer the degree of detail that they are
23 looking for, then we will revisit this topic. And maybe what
24 we do is set a time limit. You've got so many hours, you know,
25 to take these, to take a 30(b)(6) deposition and you spend it

1 how you want. If you want to spend it on weather and
2 investigation practices for shake shingles, have at it. But,
3 you know, you may, you may sacrifice some discovery on what
4 seems to me to be the core of the lawsuit.

5 MR. O'MEILIA: Well, Your Honor, here is where I was
6 going when the Court inquired as to whether I understood on
7 behalf of --

8 THE COURT: Mr. O'Meilia, will you either sit and
9 speak into the mic or step up, I don't care which, but I need
10 to get you on the recorder.

11 MR. O'MEILIA: The concern that I have and the concern
12 that my client has had since the beginning is take, for
13 example, the questions about Bixby and Broken Arrow and Sand
14 Springs and Claremore. Are we supposed to try to find a
15 witness and spend the time for that witness to go through and
16 try to determine what the weather conditions were in those
17 places, or and the claims that may have been to Sentinel
18 arising out of that particular hail storm when that's not
19 relevant. Because we spent, myself and -- Wade Gungoll was not
20 participating in the 37.1 conference, it was Brad Gungoll --
21 and we went through this kind of thing. And it was basically
22 we want the questions asked, we're going to ask all these
23 questions about this, this, this, and this and about every
24 claim that you guys had arising out of that hail storm in all
25 these cities and this kind of thing. And we're going, we've

1 got to file for a protective order because we can -- it's not
2 relevant and trying to have a witness prepared to talk on those
3 topics when number one, it's not relevant; number two, it's
4 burdensome; and number 3, those are way overbroad --

5 THE COURT: Okay. Well, let's --

6 MR. O'MEILIA: -- this is why we asked for the
7 protective order.

8 THE COURT: Let's cut through this. On number 20 for
9 example, I think Tulsa and Broken Arrow, I mean that house
10 sounds like it's out south; right?

11 MR. O'MEILIA: It's out south, yes.

12 THE COURT: Okay. I think Tulsa and Broken Arrow. I
13 don't think that Sapulpa, Owasso, Sand Springs, Bixby and
14 Claremore have anything to do with this, you know, if you're
15 talking about weather conditions. I mean if somebody knows the
16 weather conditions in Tulsa and Broken Arrow on that date it's
17 probably going to be the same as the others, so let's pare this
18 stuff down.

19 "All claims for damage in the Tulsa metropolitan
20 area." I mean again I think, you know, Tulsa and Broken Arrow,
21 or in the others, I mean if there's some general number of how
22 many claims they got out of this storm and how many were
23 denied, something like that.

24 MR. GUNGOLL: Yes, Your Honor.

25 THE COURT: But seriously if this is going to be, if

1 this is going to become some or deal by fire where we're going
2 to be spending lots of time, you know, grilling people, some
3 30(b) (6) witness over all this stuff and playing gotcha on
4 either side, it's not going to happen.

5 MR. O'MEILIA: And that's the problem with our concern
6 is --

7 THE COURT: I think you start off with Tulsa-Broken
8 Arrow which is the area where this house is located.

9 "The condition of the area in the immediate vicinity
10 of the plaintiffs' residence." I don't know what means. I
11 think that's off the table because I don't understand it, when
12 you talk about the condition of the area.

13 I would say, you know, 20 and 21 are limited to Tulsa
14 and Broken Arrow, 22 is off the table. You know, I've got
15 reservations about some of these others, but again given the
16 status of the lawsuit I can't say at this point that there's no
17 conceivable relevance, but I think you're stretching those.

18 Mr. Gungoll?

19 MR. GUNGOLL: Your Honor, we've got -- we just filed a
20 motion to compel to try to get the answers to these questions.
21 For example, how many other insureds throughout Tulsa they
22 have. So you know, if they were being cooperative in discovery
23 we may know that information. And there may be one claim, two
24 claims. I don't -- you know, it's hard to say without them
25 being cooperative in discovery.

1 THE COURT: Well, being cooperative in discovery is
2 keyed to being cooperative in relevant discovery. And just
3 because someone comes in and says I want all of your
4 information on every claim that was filed April 7th-8th, 2008,
5 that doesn't necessarily mean that the other side has to turn
6 everything over to be cooperative. If there's not much
7 material it makes sense sometimes to get over the hump and do
8 it and not just, you know, not just stonewall on the thing and
9 say I think I've got a viable objection. I think there comes a
10 point when it's a lot smarter to say we could fight over this,
11 but here, you can look at it, we've got a protective order in
12 place, here's what it is. We only had, 14, 15 claims look at
13 them, see what you think. But you know, when we get past all
14 of this it's still going to come down to, I think, did Sentinel
15 and whoever worked with them, properly deny a claim on the
16 basis that they didn't suffer hail damage on their roof. I
17 mean that's what it comes down to. And all this stuff about
18 whether they are involved under an umbrella organization with
19 similar employees with other insurance companies, could that,
20 could that have some relevance? Conceivably. But I think in
21 terms of where I would want to put my money in the discovery
22 process, that seems like a long way down the road. You know, I
23 think you folks have both got to do your clients a better
24 service in terms of focusing this lawsuit and producing what
25 needs to be produced and giving them the information that they

1 need because ultimately it comes back, we're going to save
2 everybody some money, we're going to find out whether there's
3 anything here to fight over. But if we start -- if we fight
4 constantly through the discovery process, you know, you're just
5 spending a lot of money without advancing the ball on either
6 side. So I think that the motion --

7 MR. GUNGOLL: I agree with that.

8 THE COURT: We will show the motion as denied in part,
9 granted in part. It's granted as to Items 20 and 21 and 22.
10 It's denied as to the others with the caveat of what I've gone
11 through here with you folks that, you know, get this thing
12 focused and make sure that whoever is taking these depositions
13 has their questions ready to go and they are on point because
14 if we start meandering around then, Mr. O'Melia, at some point
15 you can invoke the assistance of the Court at the appropriate
16 time and we'll step in and we'll take a look at it. We'll look
17 at the transcript and see, and if it's just a huge fishing
18 expedition that doesn't seem to be advancing the ball anywhere,
19 then we'll start putting limits on this or have the depositions
20 done down here at the courthouse if that's what it takes. You
21 know, I've babysat them before, I'll do it again. I don't like
22 it, it shouldn't be necessary, but if that's what it's going to
23 take to get this thing resolved and get the discovery wrapped
24 up, then that's what we'll do.

25 MR. O'MEILIA: May I make one comment to the Court?

1 THE COURT: Uh-huh.

2 MR. O'MEILIA: This is just because the Court has
3 indicated that we may not have been cooperating in discovery
4 because they're filing -- they're filing all these motions.
5 Counsel said that we had only given them 35 documents in
6 addition to what we gave them in Rule 26, our 26 initial
7 disclosures. We gave them our entire file as part of the Rule
8 26 disclosures and then when they didn't think they had it all
9 we went back and I think we gave them essentially the same
10 photographs and things that we had given them before.

11 In addition, in an effort to cooperate in discovery,
12 we went to this Andy Soares, their insurance agent --

13 THE COURT: Right.

14 MR. O'MEILIA: -- and asked him to produce his file on
15 it. We didn't have that file, we asked him to produce his
16 file. He gave us his file and we turned that to the plaintiff
17 and they are just not satisfied. They want all this extraneous
18 matter that has nothing to do with their claim. And that's the
19 problem.

20 THE COURT: Well, I mean there is conceivable that,
21 you know, if Haag Engineering or somebody, if there was -- if
22 there's some financial relationship there, it's conceivable
23 that there could be bias in the claims handling process. I
24 think some targeted inquiry about that would get us over the
25 hump and we will find out whether the decision to deny coverage

1 was proper or not and whether it followed some routine
2 practices and those routine practices are acceptable. So I
3 think there's, you know, there's room here beyond the strict
4 dictates. I understand that the defense would like to draw a
5 very tight, narrow ring about what's discoverable, and I
6 understand that the plaintiff would like to have a much broader
7 ring about what's discoverable, but there's a happy medium and
8 I think they are entitled to at least make some initial inquiry
9 into some of these areas to see whether there's anything worth
10 proceeding with. If they -- you know, if they -- I would
11 assume that if they find that there's really no basis for an
12 alter ego claim or that HFSG is not an insurer that, you know,
13 they can drop back, rethink it and focus their energies where
14 it ought to be focused, but I think they are entitled to at
15 least make some inquiries on that. All right.

16 MR. O'MEILIA: Yes, Your Honor.

17 THE COURT: And so that, my last point is simply to
18 reiterate that, you know, you start this 30(b) (6) and give them
19 some leeway in terms of asking some questions. And you know,
20 if somebody can't, if a corporate rep can't answer about the
21 weather conditions in Owasso or whatever, you have to bring
22 somebody else, then we'll talk, we can talk about that. And
23 you know, if it gets too far afield then there will be
24 limitations placed on how many hours you're going to get doing
25 this, because we're not just going to keep bringing 30(b) (6)

1 down here saying, well, this guy didn't know enough about the
2 weather so we need another one. It's not going to happen.
3 Both of you have got to be a little more reasonable than what
4 I'm seeing in the papers so far. There's a lot, I mean, I
5 can't believe this much paper has been filed on this particular
6 dispute, but whatever. All right?

7 MR. O'MEILIA: Yes, Your Honor.

8 THE COURT: Are we clear? Okay.

9 MR. GUNGOLL: Thank you.

10 MR. O'MEILIA: Thank you.

11 (Court adjourned.)

12

13 A TRUE AND CORRECT TRANSCRIPT FROM
14 THE ELECTRONIC SOUND RECORDING OF THE
PROCEEDINGS IN THE ABOVE-STYLED MATTER.

15

16 CERTIFIED: s/ Glen R. Dorrough
Glen R. Dorrough
United States Court Reporter

17

18

19

20

21

22

23

24

25